IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0661

STATE OF MONTANA,

Plaintiff and Appellee,

v.

SAMUEL AARON BELANGER,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Twentieth Judicial District Court,
Sanders County, The Honorable Deborah Kim Christopher, Presiding

APPEARANCES:

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STATEMENT OF THE ISSUE

Is the Appellant subject to a facially illegal registration requirement that warrants relief from this Court?

STATEMENT OF THE FACTS AND CASE

On February 10, 2010, this Court appointed the Office of the Appellate Defender (OAD) to represent the Appellant, Samuel Aaron Belanger (Belanger), in DA 09-0661. DA 09-0661 is an appeal from the October 27, 2009 order by the District Court for the Twentieth Judicial District, Sanders County, denying Belanger's *pro se* motion in DC-04-61 seeking relief from the requirement that he register as a sexual offender.

The judgment and sentence at issue were originally imposed on September 6, 2005. (9/6/05 Tr.; *see also*, D.C. Doc. 33 at 6.) Pursuant to Belanger's guilty plea, the district court convicted Belanger of a single count of deviate sexual conduct under Mont. Code Ann. § 45-5-505. (2/15/05 Tr. at 2-7; D.C. Doc. 33 at 1-2.) The factual basis for Belanger's guilty plea to deviate sexual conduct as presented during the change of plea hearing was that while Belanger was 19 years old he had "a sexual encounter with another male." (2/15/05 Tr. at 4.) No argument was made that such a deviate sexual conduct charge was constitutionally prohibited by this Court's decision in *Gryczan v. State*, 283 Mont. 433, 942 P.2d 112 (1997).

In addition to provisions regarding the length of sentence, the parties' plea agreement provided that "The State will further recommend that during the suspended portion of the sentences that the Defendant be placed on probation with the Adult Probation and Parole Office and shall abide by the conditions set forth in the Pre-sentence Investigation Report and the conditions of this Plea Agreement set forth below . . . ." (D.C. Doc. 16 at 3 (attached as Ex. A).) The only conditions then specifically listed in the plea agreement were that it was an appropriate disposition agreement under Mont. Code Ann. § 46-12-211(1)(b), that Belanger was to get credit for time-served, and that Belanger would reimburse the Crime Victim's Compensation fund for any claims paid as a result of his offense. (D.C. Doc. 16 at 3.) The plea agreement made no mention of any requirement that Belanger register as a sexual offender. The terms "registration," "sexual offender," and "Title 46, Chapter 23, Part 5" do not appear anywhere in the plea agreement.

Two and a half months after the agreement was signed and Belanger's plea changed to guilty, a pre-sentence investigation report (PSI) was submitted. (D.C. Doc. 25.) The PSI recommended that Belanger be required to register as a sexual offender. (D.C. Doc. 25 at 8 (condition 28).) At sentencing, the district court imposed all conditions listed in the PSI. (9/6/05 Tr. at 34:13-17.) The district court also explicitly designated Belanger as a "level two" offender. (9/6/05 Tr. at 35:8-9.) Belanger's original written judgment and the two subsequent amended

judgments all provide as condition 28 that "The Defendant will register as a Violent/Sexual Offender in compliance with Title 46, Chapter 23, Part 5 M.C.A. and give appropriate notice of an address change." (D.C. Docs. 33 at 5, 46 at 5, 51 at 5 (attached as Ex. B).) Defense counsel did not object to this registration requirement at sentencing. (*See* 9/6/05 Tr.) Nor did defense counsel file a direct appeal or petition for postconviction relief regarding this case.

During a subsequent appeal in a separate but contemporaneous criminal endangerment case, this Court ordered stricken a similar requirement that Belanger register as a violent offender. *State v. Belanger*, 2008 MT 383, ¶ 8, 347 Mont. 61, 196 P.3d 1248. The State conceded in that appeal that because Belanger's criminal endangerment was not a crime authorizing registration under Mont. Code Ann. §§ 46-23-502 and -504 and such registration was not part of the parties' plea agreement, the requirement should be struck. *Belanger*, ¶ 8.

On August 12, 2008, Belanger, acting *pro se*, filed a "Motion for Amendment of Judgment" with the district court in DC-04-61. (D.C. Doc. 42 (attached as Ex. C).) Belanger argued that the district court's imposition of a sexual offender registration requirement was illegal because his offense of deviate sexual conduct was not a registration offense under Mont. Code Ann. § 46-23-502. (D.C. Doc. 42 at 3-4.) Belanger also requested a correction in his time-served credit from 232 to 348 days. (D.C. Doc. 42 at 2.)

Approximately a year later, without the State ever having responded, the district court issued an amended judgment granting Belanger's 342 days of time-served credit. (D.C. Doc. 46 at 4 (condition 17).) As the district court had made no mention of Belanger's request for relief from the illegal registration requirement, Belanger, still acting *pro se*, again requested the district court to strike the registration requirement in an August 12, 2009 filing entitled "Motion to Modify Amended Judgment." (D.C. Doc. 48 at 1 (attached as Ex. D).)[1] On September 1, 2009, Belanger filed a "Notice of Issue" noting that the State had yet to respond to his previous filing and again requesting the district court to strike the illegal registration requirement. (D.C. Doc. 49 (attached as Ex. E).) The "Notice of Issue" also requested the district court to grant Belanger 349 days of time-served. (D.C. Doc. 49.)

On September 15, 2009, the State filed a "Motion to Amend Second Judgment" agreeing to the 349 day credit. (D.C. Doc. 50 at 1.) The district court signed the State's proposed order and "Second Amended Judgment" that same day, granting the 349 days of time-served credit. (D.C. Docs. 50 at 2, 51 at 4.) That same day, the State also filed a response in opposition to Belanger's request to

[1] Belanger's August 12, 2009 filing states that he had also filed a request to strike the registration requirement on May 12, 2009. (D.C. Doc. 48 at 1.) The May 12, 2009 filing is also mentioned by the district court in its June 29, 2009 order. (D.C. Doc. 45.) However, no May 2009 filings appear on the district court's docket sheet.

have the registration requirement vacated. (D.C. Doc. 52.) The State argued that the registration requirement was legal because the plea agreement contained a provision (quoted above) that the State would be recommending imposition of conditions listed in the PSI. (D.C. Doc. 52 at 1-2.) The State claimed on the basis of this "will further recommend" provision that Belanger had agreed to imposition of the registration requirement suggested in the PSI. (D.C. Doc. 52 at 2.)

The district court denied Belanger's request to strike the registration requirement by written order on October 27, 2009. (D.C. Doc. 53 (attached as Ex. F).) The district court reasoned that Belanger had "acknowledged this requirement as part of the State's recommendation when he signed the Plea Agreement." (D.C. Doc. 53 at 1.) The district court also observed that Belanger had failed to object at sentencing and that the requirement had been imposed over four years earlier. (D.C. Doc. 53 at 1-2.) Belanger filed a timely, *pro se* notice of appeal with this Court stating that he was appealing the district court's "decision and Order Denying defendant's request to strike sentencing condition requiring offender registration." This Court subsequently appointed OAD to assist Belanger with this appeal.

SUMMARY OF THE ARGUMENT

The registration requirement imposed on Belanger is facially illegal as Belanger was not convicted of a registration offense and did not affirmatively

agree to register in a plea agreement accepted by the district court. The restraint of liberty imposed by this illegal sentence constitutes a grievous wrong that warrants relief from this Court despite the timing and nomenclature of Belanger's requests for relief below. Granting relief through this appeal would also serve the interests of justice as Belanger's present procedural situation arises out of a series of abandonments by attorneys appointed to assist Belanger during the 2005 to 2009 period.

STANDARD OF REVIEW

This Court generally reviews a criminal sentence for legality, i.e., whether it falls within statutory parameters. *State v. Erickson*, 2008 MT 50, ¶ 10, 341 Mont. 426, 177 P.3d 1043. A sentencing court's interpretation of these statutory sentencing parameters is a question of law that this Court reviews for correctness. *Erickson*, ¶ 10.

ARGUMENT

THE REGISTRATION REQUIREMENT HERE IS A FACIALLY ILLEGAL SENTENCE THAT WARRANTS RELIEF FROM THIS COURT DESPITE THE TIMING AND MANNER OF BELANGER'S *PRO SE* REQUEST.

A. The Registration Requirement Is Facially Illegal.

This Court has consistently held--and the State has generally conceded--that a defendant cannot be required to register under Title 46, Chapter 23, absent either conviction of a crime explicitly defined in Mont. Code Ann. § 46-23-502 as being

a sexual or violent offense or the defendant's having affirmatively agreed to register under Mont. Code Ann. § 46-23-512 as part of a plea agreement. *State v. Grana*, 2009 MT 250, ¶ 12, 351 Mont. 499, 213 P.3d 783; *State v. Rowe*, 2009 MT 225, ¶¶ 32-33, 351 Mont. 334, 217 P.3d 471; *Belanger*, ¶ 8, "[U]nless Montana statutes permit the imposition of a SVORA registration requirement, a court may not impose one." *State v. Hastings*, 2007 MT 294, ¶ 19, 340 Mont. 1, 171 P.3d 726.

Belanger's offense, deviate sexual conduct under Mont. Code Ann. § 45-5-505, is not a sexual or violent offense as defined by Mont. Code Ann. § 46-23-502(9) or (13). Thus, imposition of a registration requirement could only be statutorily authorized if, pursuant to Mont. Code Ann. § 46-23-512, Belanger had agreed to register as part of a plea agreement accepted by the district court. Belanger, however, did not agree to register as part of his plea agreement. The district court's holding to the contrary (D.C. Doc. 53 at 1-2) is incorrect in several respects.

First, the plea agreement makes no mention of "registering" or of "registration" nor of Belanger being a "sexual offender." (*See* D.C. Doc. 16.) Nor was the subject discussed during the change of plea hearing. (*See* 2/15/05 Tr. at 2-8.) Rather the plea agreement merely notes that the State "will further recommend" that Belanger "shall abide by the conditions set forth in the [PSI]."

(D.C. Doc. 16 at 3.) There is no explicit, affirmative agreement to register in the agreement. Moreover, because the PSI did not yet exist when Belanger signed the plea agreement, the registration recommendation in the PSI cannot be said to be part of the February 14, 2005 plea agreement even by incorporation.

Secondly, the plain language of the plea agreement was that "the State will further *recommend*" imposition of PSI's suggested conditions, not that Belanger had "agreed" to them. (D.C. Doc. 16 at 3 (emphasis added).) Montana Code Annotated § 46-23-512 requires a defendant to "agree" to registration, but Belanger's plea agreement does not include any agreement by Belanger that conditions listed in the PSI could or would be lawfully imposed. The parties merely contracted that the State would be free to "recommend" that the district court impose any condition suggested by the PSI author. Thus, unlike the agreement in *Grana*, ¶ 13, which explicitly "provided that the District Court could require [the defendant] to register as a sexual offender, subject to his right to argue that registration was not appropriate," here, there was no agreement from Belanger that the district court would have authority to require his registration. This is especially true since the only mention of "registering" occurred in the later PSI, not in the plea agreement itself. Moreover, unlike in *Grana*, ¶ 14, where the defendant later acknowledged that he had agreed to register, there is no subsequent evidence here that Belanger had affirmatively agreed to register.

Finally, Mont. Code Ann. § 46-23-512 only authorizes imposition of a registration requirement where the sentencing court accepts a plea agreement that includes registration. Mont. Code Ann. § 46-23-512 ("a court accepting the plea agreement may order the defendant to comply with this part"). The statute, thus, also does not apply here because the district court did not follow or "accept" the plea agreement. The plea agreement, which was an appropriate disposition agreement, called for a sentence of ten years commitment to the Department of Corrections with five of the years suspended set to run concurrently with other revocation sentence. (D.C. Doc. 16 at 2.) The district court instead imposed a ten year Montana State Prison sentence with five years suspended set to run consecutively to Belanger's other sentence. (D.C. Doc. 33 at 2; 9/6/05 Tr. at 37.)

That a sexual offender evaluator recommended a level 2 designation for Belanger (3/20/09 Tr. at 46; D.C. Doc. 82 at 7) is of no relevance to this analysis as it does not change the fact that Belanger has not been convicted of a sexual offense. Nor does the district court's imposition of a parole eligibility restriction regarding completion of Phase I of the sex offender treatment at the Montana State Prison require or authorize registration. A district court can impose such sexual treatment conditions pursuant to its general, Mont. Code Ann. § 46-18-202(2), parole restriction authority without any reliance upon sexual offense specific statutes such as Mont. Code Ann. § 46-18-207(2). *See State v. Bullman*, 2009 MT

37, ¶¶ 33-34, 349 Mont. 228, 203 P.3d 768; *State v. Marshall*, 2007 MT 218, ¶¶ 17-22, 339 Mont. 50, 170 P.3d 923.

The district court, thus, lacked statutory authority to require Belanger's registration. Although the circumstance and nature of Belanger's offense may sustain the treatment and other restrictive conditions imposed here, *see Bullman*, ¶¶ 33-34; *Marshall*, ¶¶ 17-22, they cannot support a sexual offender registration requirement under Montana's registration statutes. Being outside of the statutory parameters, the district court was without authority to impose the registration requirement here, warranting reversal of this provision of Belanger's sentence. *Rowe*, ¶ 34. Although Belanger's counsel did not object below that the district court lacked statutory authority to require registration, the issue has not been waived because the registration requirement exceeds statutory parameters and is, thus, an "illegal" sentence to which the *Lenihan* exception applies. *State v. Kotwicki*, 2007 MT 17, ¶ 13, 335 Mont. 344, 151 P.3d 892; *State v. Lenihan*, 184 Mont. 338, 343, 602 P.2d 997, 1000 (1979); *see also*, *State v. Makarchuk*, 2009 MT 82, ¶¶ 29-31, 349 Mont. 507, 204 P.3d 1213 (applying the *Lenihan* exception to review and reverse the imposition of parole conditions that were beyond the district court's statutory authority).

B. This Court Can Address and Remedy Belanger's Facially Illegal Sentence in This Appeal by Treating His Motions Below as a Petition for a Writ of Habeas Corpus.

Belanger would ask this Court to procedurally treat his request to strike the illegal registration requirement as a petition for a writ of habeas corpus. This Court "look[s] to the substance of a motion, not just its title, to identify what motion has been presented." *See Miller v. Herbert*, 272 Mont. 132, 136, 900 P.2d 273, 275 (1995). Although entitled as motions "for amendment of judgment" and "to modify amended judgment," the substance of Belanger's district court filings was a petition for habeas corpus relief, that is a request from a person illegally "restrained of liberty . . . to be delivered from the . . . restraint." Mont. Code Ann. § 46-22-101(1). The illegal registration requirement restrains Belanger's constitutional liberty by requiring his compliance with burdensome registration procedures and by exposing him to further incarceration should he fail to register. *See State v. Samples*, 2008 MT 416, ¶ 34, 347 Mont. 292, 198 P.3d 803 (concluding that "there is a liberty interest at stake when a person is designated as a particular risk level under the [Sexual and Violent Offender Registration] Act").

This Court has held in the context of a petition for a writ of habeas corpus that it will remedy "a facially invalid sentence" even after a defendant has otherwise become time-barred from seeking relief through a direct appeal or petition for postconviction relief. *Lott v. State*, 2006 MT 279, ¶¶ 22-23, 334 Mont.

270, 150 P.3d 337; *see also*, *Borgen v. Sorrell*, 2009 MT 143, ¶ 10, 350 Mont. 339, 217 P.3d 1022; *State v. Anderson-Conway*, 2007 MT 281, ¶ 14, 339 Mont. 439, 171 P.3d 678; *State v. Jackson*, 2007 MT 186, ¶ 10, 338 Mont. 344, 165 P.3d 321; *Gratzer v. Mahoney*, 2006 MT 282, ¶ 2, 334 Mont. 297, 150 P.3d 343. The Court defines "a facially invalid sentence" to be "a sentence which, as a matter of law, the court had no authority to impose," and recognizes that "incarceration of an individual pursuant to a facially invalid sentence represents a 'grievous wrong,' and a 'miscarriage of justice.'" *Lott*, ¶ 22 (*quoting Brecht v. Abrahamson*, 207 U.S. 619, 637 (1993), and *State v. Perry*, 232 Mont. 455, 462, 758 P.2d 268, 273 (1998)).

The "'grievous wrong'" of a facially invalid sentence, *Lott*, ¶ 22 (*quoting Brecht*, 207 U.S. at 637, should not be allowed to stand merely because a *pro se* defendant entitled his request for relief a "Motion for Amended Judgment" rather than a petition for a writ of habeas corpus. Even if this Court determines that Belanger's motions cannot technically be denoted as a habeas petition, "the claim nevertheless sounds in the nature of a petition for habeas corpus," and the interests of justice would be served by reviewing and granting Belanger relief from his illegal sentence through this appeal proceeding. *See Perry*, 232 Mont. at 462, 758 P.2d at 273 (*overruled on other grounds*, *State v. Clark*, 2005 MT 330, ¶ 32, 330 Mont. 8, 125 P.3d 1099).

Addressing this facially illegal sentence now would also be a more efficient use of judicial resources than other procedural routes available to Belanger, such as violating a condition of his suspended sentence and then objecting to the registration requirement during his post-revocation resentencing, *see Belanger*, ¶¶ 6-8 (striking an illegal registration requirement as part of an appeal from revocation and resentencing), or withdrawing this appeal and initiating an original, independent habeas proceeding before this Court, *Lott*, ¶¶ 3-4, or seeking permission to file an out-of-time appeal from the 2005 judgment on basis that the lack of a timely appeal was due to appointed counsel's failure to contact Belanger regarding appeal,[2] *see State v. Garner*, 1999 MT 295, ¶ 10, 297 Mont. 89, 990 P.2d 175.

C. Abandonments by Previously Appointed Counsel also Weigh in Favor of This Court Exercising Its Discretion in the Interest of Justice to Treat Belanger's Requests for Relief as a Habeas Petition and to Grant Him Relief From His Illegal Sentence.

As this Court has recognized, "The central function of the courts is the achievement of justice." *Perry*, 232 Mont. at 462, 758 P.2d at 273; *see also*, *Lott*, ¶ 20. In determining whether the Court's discretion is moved to treat Belanger's motions to amend or modify judgment as a petition for a writ of habeas corpus, undersigned counsel would suggest that in addition to the arguments above the

[2] Discussed in Section C below.

Court also give consideration to appointed counsel's repeated abandonments of Belanger during the 2005 to 2009 period. These abandonments had the effect of depriving Belanger of other, more traditional, procedural avenues for obtaining relief and have resulted in his present procedural posture. As summarized below, the record in this case and in contemporary proceedings in DC-03-11[3] demonstrate that appointed counsel during the 2005 to 2009 period failed Belanger with respect to direct appeal from the illegal sentence, withdraw of guilty plea, and with fashioning his 2008-09 relief requests as a procedurally viable petition for a writ of habeas corpus.

On April 19, 2005, several months after Belanger's guilty plea, original appointed counsel, John Putikka (Putikka), sought permission to withdraw as counsel on the grounds that Belanger "has now insisted that undersigned counsel appeal the revocation proceeding to the Montana Supreme Court even though counsel has advised him that undersigned counsel does not see a legal basis for

[3] Belanger requests this Court take judicial notice pursuant to Mont. R. Evid. 202(b)(6) of court documents filed in Belanger's pervious appeal, DA 06-0196, as well as documents in the district court record for DC-03-11, which is currently in this Court's possession as part of Belanger's DA 10-0116 appeal.

such an appeal,"[4] that "counsel is concerned about the statements Defendant has made to both his counsel and the sex offender therapist about counsel's ability to effectively represent him in this matter and in the other case," and that "counsel cannot effectively communicate with the Defendant and the attorney-client relationship has deteriorated to the point that the Defendant obviously has no faith in the abilities of his court appointed counsel." (D.C. Doc. 21 at 2.) The district court allowed Putikka to withdraw and appointed Carolyn Gill (Gill) as Belanger's counsel. (D.C. Doc. 22.) By statute, Gill's appointment was "effective until final judgment, including any proceeding upon direct appeal to the Montana supreme court, unless relieved by order of the court that assigned counsel or that has jurisdiction over the case." Mont. Code Ann. § 46-8-103(1).

Gill did represent Belanger at his September 6, 2005 sentencing (9/6/05 Tr.), but did not subsequently assist Belanger in filing a notice of appeal. According to the district court's docket sheet, Belanger's original written judgment was not

[4] Counsel's statement that there was no legal basis for appeal in the revocation case--a case whose eventual appeal resulted in this Court striking a nearly identically illegal registration requirement pursuant to a State concession, *Belanger*, ¶ 8--implicitly demonstrates that when this same attorney was advising Belanger in this case during plea negotiations and change of plea process, the attorney did not understand the statutory requirements for imposition of registration requirement. Were this Court to interpret the plea agreement language here as agreeing to a registration requirement, Belanger, under such an interpretation, would have a meritorious claim that his guilty plea was not knowing, intelligent, and voluntary as he was not accurately advised by counsel regarding the limitations on imposition of a registration requirement.

"entered" into the record until May 17, 2006; thus, the sixty-day window in which to file a timely notice of appeal under Mont. R. App. P. 4(5)(b)(i) ran from May 17, 2006, until July 17, 2006. *See State v. Clark*, 2008 MT 112, ¶ 12, 342 Mont. 461, 182 P.3d 62. In a September 13, 2006, *pro se* filing, Belanger--who was incarcerated at the time--stated that he "has not been able to contact Mrs. Carolyn Gill, since September of 2005." (D.C. Doc. 34.) This statement indicates that Gill did not communicate with Belanger anytime after sentencing during the period in which Belanger needed her assistance to file a notice of appeal from the district court's illegal sentence. Gill was similarly appointed on April 26, 2005, to represent Belanger during appeal of his revocation case, but according to Gill's March 30, 2006 filing with this Court in DA 06-0196, she did not learn of the appointment until March 15, 2006, and appears to have had no contact with Belanger as part of that appointment. (*See* attached Ex. G.)

On September 13, 2006, Belanger--noting that he had been unable to contact Gill, his existing appointed counsel, since September of 2005--sought appointment of counsel from the district court to assist him in filing a motion to withdraw guilty plea. (D.C. Doc. 34.) The State indicated that it had no objection to this appointment, and on October 3, 2006, the district court appointed the Office of the State Public Defender (OSPD) to represent Belanger by handwritten order. (D.C. Docs. 34-35.) Undersigned counsel would observe that in addition to concerns

regarding inaccurate advice regarding the legality of the registration conditions, a motion to withdraw plea could viably have been based on the district court having jumped Belanger's appropriate disposition plea agreement without offering Belanger an opportunity on the record to withdraw his plea as required by Mont. Code Ann. § 46-12-211(4). (*See* 9/6/05 Tr. at 33-34, 37.) Although this 2006 appointment of counsel was made in response to a request from Belanger related to a potential motion to withdraw guilty plea, nothing in the district court's appointment order explicitly limited the representation's scope to that issue, and OSPD filed no notice of appearance so limiting its role. (*See* D.C. Doc 34 at 1 ("Δ is conditionally appointed the State Public Defender's Office to represent him if eligible.").) Given the lack of any motion or order in the record allowing OSPD to withdraw from this October 2006 appointment, the appointment appears to remain in effect through the present day.

In a October 23, 2006 *pro se* filing, Belanger advised the district court that he had not yet heard from OSPD and requested a 90 day extension of the deadline for filing a motion to withdraw plea. (D.C. Doc. 36.) The district court granted the requested extension. (D.C. Doc. 37.) On February 22, 2007, Belanger filed a second *pro se* motion for extension of time; however, Belanger's explanations within the body of this motion indicated that a public defender was acting in his case. (D.C. Doc. 38 at 1 (stating that "the defendant's attorney, Noel Larrivee,

needs more for discovery in this matter" and that "Mr. Larrivee has been in contact with the new county attorney").) In a handwritten, March 6, 2007 order on this motion, the district court noted that Belanger had been appointed counsel on October 18, 2006, and stated that it would not rule on the *pro se* motion as Belanger is represented by counsel. (D.C. Doc. 38 at 1.) Appointed counsel never filed a similar extension motion, and Belanger's window for seeking withdraw of his guilty plea expired without any indication in the district court's docket sheet of OSPD ever having filed a motion to withdraw guilty plea or having taken any other action on Belanger's behalf.

On June 1, 2009, then Regional Deputy Public Defender Putikka filed a motion with the district court "for an Order rescinding the Conditional Appointment received by the Kalispell Office of the State Public Defender on May 22, 2009 asking for appointment of counsel." (D.C. Doc. 43.) However, as this referenced 2009 "Conditional Appointment" does not appear in the district court's docket sheet, the nature of this purported May 2009 appointment is unclear. Belanger had in March of 2008 mistakenly filed a request for appointment of counsel under this case's cause number (DC-04-61) when the request in fact related to Belanger's other case in the same court (DC-03-11); (D.C. Docs. 39-41) however, this May 2009 appointment does not appear to relate to that request as there is no indication in either case's docket sheets of the district court ever having

made a conditional appointment relating to the 2008 request. Nor does is seem likely that what OSPD's motion described as a May 2009 appointment in cause number DC-04-61, would have actually related to a request made in March of 2008, and clarified by April of 2008 as relating to DC-03-11. The district court rescinded the May 2009 "Conditional Appointment" on June 25, 2009, but troublingly Belanger was never served with either a copy of OSPD's motion to rescind or the rescindment order, nor was he otherwise afforded an opportunity to respond to OSPD's request to removal counsel in this case. (*See* D.C. Docs. 43 at 2, 44 at 1.)

In sum, when weighing procedural deficiencies in Belanger's *pro se* efforts to obtain relief from this illegal sentence and his present request that this Court treat his filings below as a petition for a writ of habeas corpus, Belanger asks the Court to give consideration to the affect various appointed counsel had in creating the situation in which Belanger was left acting *pro se* and outside of normal direct appeal and motion to withdraw guilty plea timelines. "The central function of the courts is the pursuit of justice. Like all human endeavors, this pursuit is occasionally flawed." *Lott*, ¶ 20. Belanger implores this Court to look past the procedural flaws of his *pro se* efforts and to do justice by reviewing and remedying his illegal sentence.

CONCLUSION

Belanger requests this Court strike the facially illegal registration requirement from his sentence.

Respectfully submitted this ____ day of June, 2010.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

_____

KOAN MERCER

APPENDIX